

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Housing
(AC-Ho)

File Naming Example:

Record of Comm. Proceedings ... RCP

- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

Published Documents

➤ Committee Hearings ... CH (Public Hearing Announcements)

➤ **

➤ Committee Reports ... CR

➤ **

➤ Executive Sessions ... ES

➤ **

➤ Record of Comm. Proceedings ... RCP

➤ **

*Information Collected For Or
Against Proposal*

➤ Appointments ... Appt

➤ **

➤ Clearinghouse Rules ... CRule

**

➤ Hearing Records ... HR (bills and resolutions)

➤ **05hr_ab0783_AC-Ho_pt01**

➤ Miscellaneous ... Misc

➤ **



WISCONSIN REALTORS ASSOCIATION

TO: All Legislators
FROM: Michael Theo and Rick Staff
DATE: October 11, 2005
RE: Co-sponsorship of the American Dream Consumer Act

On behalf of Realtors throughout Wisconsin and the consumers they represent, we encourage you to co-sponsor LRB 1387 (Assembly) and LRB 3114 (Senate), companion legislation to modernize and strengthen laws governing agency representation in real estate transactions – The American Dream Consumer Act. LRB 1387 is currently being circulated by Representative Steve Wieckert and LRB 3114 is being circulated by Senator Cathy Stepp.

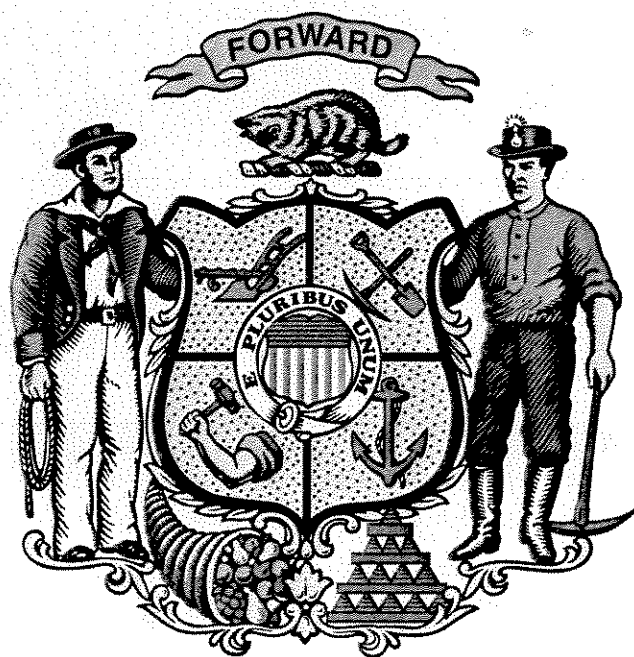
Intent of this legislation

This legislation is the product of over three years of research and study, including input from consumer protection experts from the Department of Regulation and Licensing, legal experts and industry experts. The intent of this legislation is to insure consumer protection in light of changing real estate business models and practices.

Reasons to co-sponsor LRB 1387 and LRB 3114

- Technology has dramatically changed the real estate market substantially over the past decade but the laws governing the relationship between real estate agents and consumers remains unchanged.
- Better-informed consumers however remain confused about the duties they are owed by real estate agents in a transaction.
- Technology and strong real estate markets have intensified competition and created new real estate business models offering consumers a wide choice of professional real estate representation.
- But while buyers' agents, sellers' agents, limited service brokers, reduced commission brokers and the like offer consumers choices, they must also fulfill the legal duties to protect consumers.
- This legislation is intended to modernize existing real estate agency laws by:
 - Revising dual agency rules to allow two agents from one company to provide full negotiation services for seller and buyer clients in a transaction.
 - Clarifying that brokerage services can be provided to consumers without an agency agreement prior to negotiations.
 - Defining pre-agency relationships so that consumers are fully protected when receiving services prior to negotiations.
 - Clarifying the role and duties of subagents.
 - Minimizing unnecessary complexity and confusion by requiring agency disclosures be provided in plain English.
 - Requiring agents to be neutral in their dealings with all parties until one party or the other retains them as an agent.
 - Requiring strict confidentiality and loyalty duties of agents providing services to multiple clients in a transaction.
 - Clarifying the relationship between license law and common law.

This legislation is the top priority of the Wisconsin Realtors Association this session. Your support will help professional Realtors provide consumers with better service, enhanced transactional transparency and maximum protection when buying or selling real property in Wisconsin. We strongly encourage you to co-sponsor and actively support LRB 1387 (Assembly) and LRB 3114 (Senate).



Becher, Scott

From: Theo, Mike - VP Public Affairs [mtheo@wra.org]
Sent: Wednesday, October 12, 2005 5:51 PM
To: Risch, Jay; Becher, Scott
Cc: Malkasian, Bill - Pres; Staff, Rick -VP Legal Services
Subject: Co-sponsor memo
Attachments: Agency.cosponsor.101105.doc

Jay and Scott:

I'm assuming the bill is being circulated for co-sponsorship. This memo will be emailed to all legislative offices to be followed by a hard copy mailing. Can you let me know if our hearing dates and times have been locked and when the deadline is for getting cosponsors?

Thanks.

Mike

<<Agency.cosponsor.101105.doc>>

Michael Theo

Vice President for Public Affairs

Wisconsin REALTORS Association
4801 Forest Run Rd. Suite 201
Madison, WI 53704

Phone: 608-241-2047
Fax: 608-241-5168

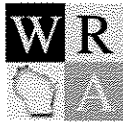
www.wra.org <<http://www.wra.org/>>

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10/12/2005



WISCONSIN REALTORS ASSOCIATION

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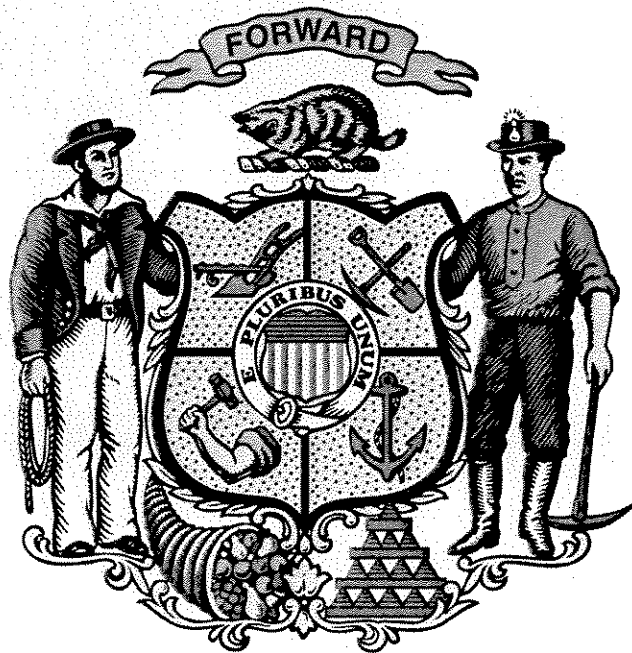
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Wieckert, Steve

From: jay@real-reform.org
Sent: Tuesday, October 25, 2005 11:05 AM
To: jay@real-reform.org
Subject: AB 783/SB 401 -- Consumers and Small Brokers Need Your Support in Amending

[AB 783 was previously known as LRB 1387/6 in the Assembly and SB 401 was previously known as both LRB 3114 & LRB 3880 in the Senate.]

Dear Representative,

By now, you have undoubtedly become aware of the Wisconsin Realtors Association, WRA, created/backed Bill, AB 783/SB 401, which the WRA would like to pass off as the "American Dream Consumer Act".

Unfortunately, while this Bill is every large real estate brokerage firm's dream, it represents a nightmare for consumers and for real estate licensees who own sole proprietor and small realty shops.

Nonetheless...REAL-Reform is no longer flatly opposing this Bill. Though we feel the proposal is still a poor substitute for the gold standard in consumer protection, the common law of agency, we do feel that a few consumer and small broker friendly amendments would neutralize the most anti-consumer, anti-small broker aspects of the WRA Bill.

With these amendments, disclosure would remain early enough, and be substantive enough, that consumers could still educate themselves about their options at a time before they can unknowingly obligate themselves--via procuring cause--to a licensee. (Procuring cause steals a buyer's right to make their own choices on who will represent their interests in a real estate transaction.)

To get a better understanding of procuring cause, please review the following, informative, links:

<http://www.ired.com/news/2001/0102/procuringcause.htm>

<http://www.ired.com/news/2000/0008/moneysecret.htm>

http://www.real-reform.org/pc_facts.pdf

<http://www.ired.com/news/2000/0008/pcmyths.htm>

Another amendment would make it so small brokers would not have to go neutral on both clients, when they have two clients in one transaction. This is a crucial matter for sole proprietors, to remain competitive.

Here is what REAL-Reform is proposing for amendments, and would ask you to support/introduce:

- 1) Timing of the disclosure of agency options remains at the first meaningful point of contact. It need not mandate what relationship will be chosen, but the options do need to be presented, in order to protect consumer rights to choice of representation.

2) In that disclosure form all business models will be defined, in addition to whatever other explanations are deemed necessary. (In other words, the following firm-level models will be defined: Traditional Agency, Seller Only Agency, Buyer Only Agency, Designated Agency, Dual Agency (aka Multiple Representation) and Limited Service.)

3) A plain English, mandatory, written disclosure of what procuring cause is, and how it can take away a buyer's right to make choices about what agent may represent them in a transaction also must be provided, and separately initialed, at the first meaningful point of contact.

4) Sole Proprietor, and Small Broker Firms, shall have the ability to agree, in writing, to waive the duty of loyalty to a client when there are two clients in the same transaction.

The small brokers--or all brokers, if that makes it more palatable to the big brokers--need to have the ability to agree, in writing, to waive the duty of loyalty to a client when there are two clients in the same transaction.

This way, companies that primarily deal with only sellers or only buyers, can still specialize, but not be put at a complete competitive disadvantage by the new law.

This will remove a large broker's ability to "warn" buyers and sellers against retaining sole proprietor, or small firms, out of the danger of both parties losing real representation. (Multiple Representation is not real representation. It is, by statute, neutrality.)

So, in other words, a sole proprietor who has a buyer and seller in the same transaction can agree in their agency agreement, up front, that the firm will be released from its loyalty duty if, for instance, a buyer client of the firm wants to purchase that seller's property.

As the alternative is multiple representation, where both parties are forced to receive neutralized loyalty services, this shouldn't be an issue. If both can agree to accept lesser services...why not one?

Subject to the foregoing consumer/competitive protective amendments, REAL-Reform will support the WRA backed Bill.

The only arguments that the WRA can make for disallowing these amendments are ones that operate to the benefit of large firm licensees, at the disadvantage of consumers and small broker competition.

Disclosure is about educating the consumer as early as possible in the process. The current bill does not do that. Competition is between firms. Designated Agency creates a competitive disadvantage for small brokers.

Please...for the sake of Wisconsin consumers and to keep small real estate brokers from being driven out of business--something that would further reduce consumer choice--please support the inclusion of these amendments to AB 783/SB 401.

We welcome any questions you may have...

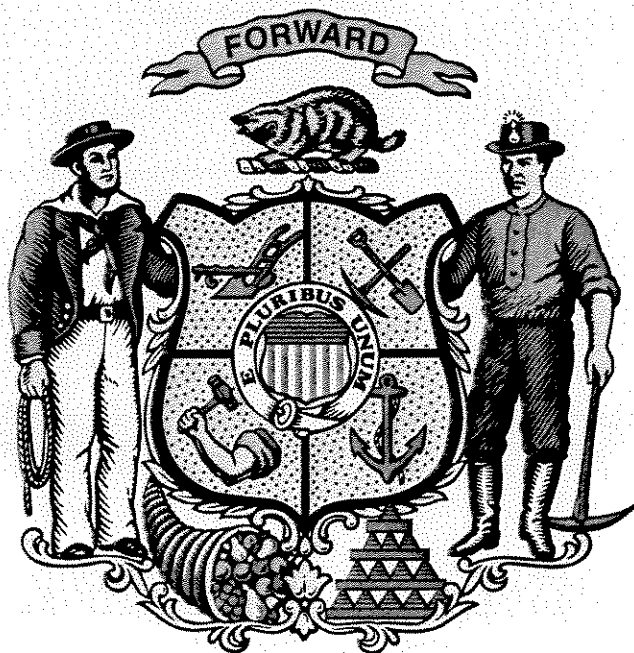
Sincerely Yours,

Jay Reifert, Organizer/Director of Operations
REAL-Reform (Real Estate Agency Law-Reform)

<http://www.real-reform.org>

<http://real-reform.blogspot.com> <--- New Blog...Check Back Frequently

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or <mailto:true-agents@true-agent.com>





WISCONSIN REALTORS ASSOCIATION

TO: All Legislators
FROM: Michael Theo and Rick Staff
DATE: October 25, 2005
RE: Amendments to AB 783 and SB 401

Several amendments may be offered to AB 783 and SB 401, legislation to modernize and strengthen laws governing agency representation in real estate transactions. **These amendments will substantially weaken the bills and should be rejected.**

Please consider the following:

1. Amendment on timing of agency disclosure

One amendment being discussed would force consumers to make choices about what kind of representation they want in a transaction before they have received important information regarding their options and of the marketplace.

This amendment should be rejected because:

- This amendment would deny consumers the ability to make an informed choice about the kind of real estate representation that best suites them.
- AB 783 and SB 401 maintains current law regarding the timing of agency disclosure but clarifies that such disclosure must be made no later than when a party indicates their interest in buying or selling a property. (The bill does this by defining when "negotiations" begin, which is the trigger for required agency disclosure.)
- AB 783 and SB 401 require disclosure at the time of negotiation or the time an agency agreement is signed (which is done prior to "promoting the sale").
- Current law, and this bill, require agency disclosure prior to providing brokerage services -
(452.135(2) No broker may provide brokerage services to a party to a transaction unless the broker has provided to the party a written agency disclosure form may not place the interests of any client ahead of the interests of another client in the transaction.)
Brokerage services are defined as: 452.01 Definitions. In this chapter: (3e) "Brokerage service" means any service described under sub. (2) (a) to (h) provided by a broker to another person.
- Therefore the amendment would create more ambiguity and confusion over current law and defeat the clarity and certainty created in AB 783 and SB 401.

2. Amendment on disclosing "business" models in agency forms

Another amendment would require that a multitude of various business models be defined in an agency disclosure.

This amendment should be rejected because:

- This amendment is not needed and impossible to implement.

- It is not needed because AB 783 and SB 401 include a plain English disclosure of all "agency" models available to consumers, providing them with a clear understanding of their choices for representation. Moreover, the legislation also alerts consumers to carefully review their agency agreement to ensure they understand the commission structure they are agreeing to.
- The proposed amendment would add to this a description of all real estate "business" models which is quite literally impossible. There are hundreds such business models in existence today, with new ones being created daily in response to consumer desires. More importantly, such a disclosure adds no value to consumers who are more concerned with their representation in their transaction, which is the focus of this legislation.
- No other state in the nation requires this disclosure.

3. Disclosure of procuring cause

Another amendment would require a written disclosure of what "procuring cause" is and its potential impact on consumer choices for representation.

This amendment should be rejected because:

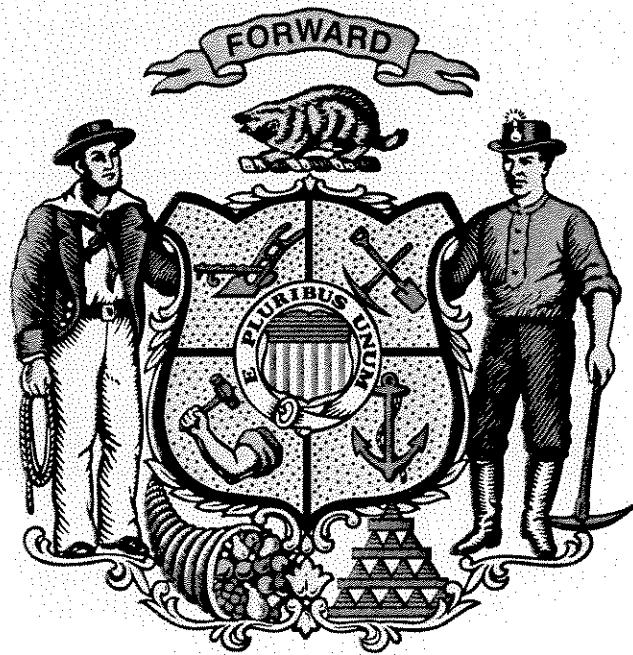
- Procuring cause has absolutely nothing to do with a buyers' decision regarding the broker they choose to represent them.
- Procuring cause is a standard used by REALTOR arbitration panels to determine entitlement to a commission when two or more REALTORS are disputing commission splits.
- Procuring cause is a standard set by the professional trade association REALTORS and is not part of statutory or administrative law.
- No other state in the nation requires this disclosure.

4. Ability to waive duty of loyalty

Another amendment proposes to waive the current duty of loyalty owed to a client so that a single broker can represent both the buyer and the seller in the same transaction.

This amendment should be rejected because:

- The duty of loyalty to a client lies at the cornerstone of real estate representation and should not be abandoned in this bill.
- While such a proposal has been considered by some industry groups and regulators across the country, it has been rejected because no successful model currently exists that allows one person (regardless of whether they are a sole practitioner or an agent in a large firm), to negotiate on behalf of both parties in a single transaction.
- This proposal may be worth future consideration, it is not ripe for implementation at this time and should only be considered after the industry and regulators have gained experience under the designated agency model.
- No other state in the country has such a waiver.





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Please consider the following:

1. Amendment on timing of agency disclosure

One amendment being discussed would delete an important clarification the bill makes to current law regarding the timing of agency disclosures. The change would force consumers to make choices about what kind of representation they want in a transaction before they have received important information regarding their options and the marketplace.

This amendment should be rejected because:

- Consistent with current law, AB 783 and SB 401 provides that agency disclosure be made no later than when a party first indicates their interest in buying or selling a property.
- Under the bill, agency disclosure is required before any negotiations begin – which is even earlier in the transaction than the amendment proposes.
- The amendment therefore unnecessarily eliminates a useful clarification and would create more ambiguity and confusion than exists under current law.
- The provision in the bill, which this amendment seeks to eliminate, is supported by the Department of Regulation and Licensing.

2. Amendment on disclosing “business” models in agency forms

Another amendment would require that all business models available in the marketplace be defined in an agency disclosure.

This amendment should be rejected because:

- This amendment is not needed and impossible to implement.
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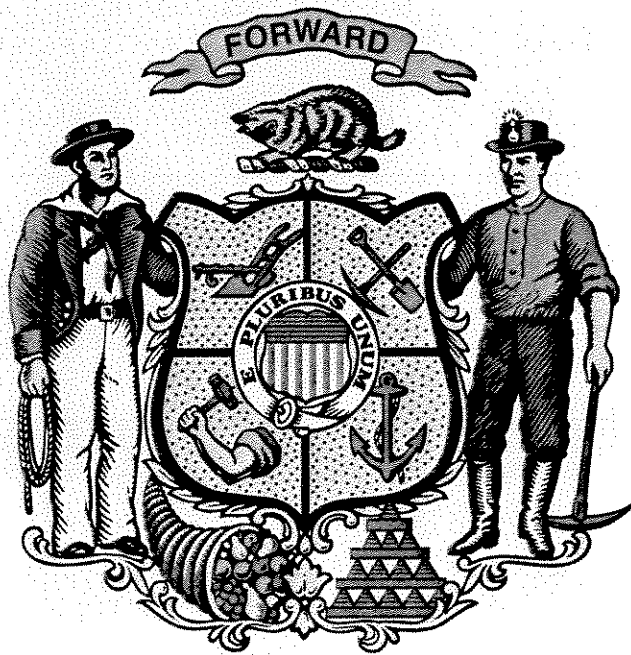
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- This proposal may be worth future consideration, it is not ripe for implementation at this time and should only be considered after the industry and regulators have gained experience under the designated agency model.
- No other state in the country has such a waiver.



Wieckert, Steve

From: Jason Westphal [JWestphal@wisbar.org]
Sent: Tuesday, October 25, 2005 5:24 PM
To: Sen.Coggs; Sen.Stepp; Sen.Harsdorf; Sen.Brown; Sen.Reynolds; Sen.Plale; Sen.Lassa;
Rep.Wieckert; Rep.Townsend; Rep.Kreibich; Rep.Montgomery; Rep.WilliamsA; Rep.Young
Subject: AB 783 & SB 401 (The American Dream Consumer Act)

In preparation for tomorrow's joint hearing on Assembly Bill 783/Senate Bill 401, relating to duties of real estate brokers and salespersons, I would like to take this opportunity to clarify some confusion surrounding the official position of the State Bar of Wisconsin.

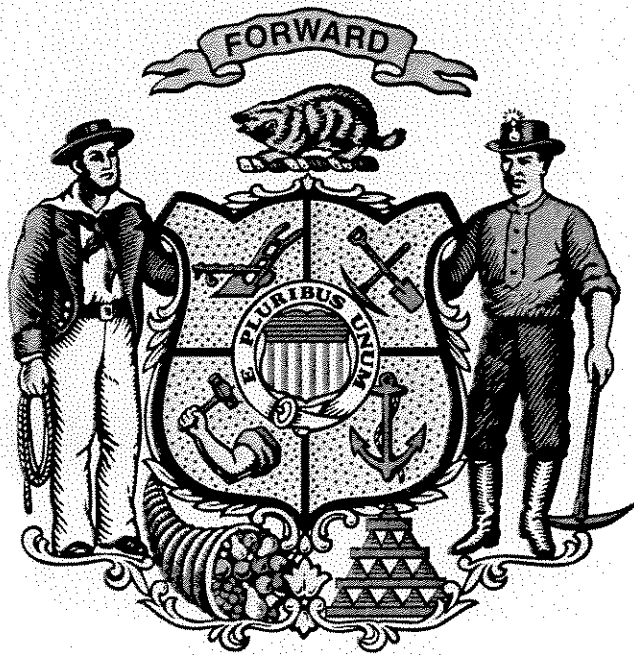
Although our Board of Governors had some serious reservations about certain provisions that were included in previous drafts of the proposed legislation, that language has since been removed and our initial opposition withdrawn.

THEREFORE, THE STATE BAR OF WISCONSIN (AND IT'S SECTIONS) REMAINS NEUTRAL AND HAS TAKEN NO POSITION ON AB 783 OR SB 401 AS INTRODUCED.

If you have any questions or need more information, please feel free to contact me at your convenience.

Jason J. Westphal
Government Relations Coordinator
State Bar of Wisconsin
5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158
Phone: (608) 250-6077
Cell: (608) 695-5686
Fax: (608) 257-4343
jwestphal@wisbar.org

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**Testimony of State Representative
Steve Wieckert**

**Assembly Bill 783 – American Dream Consumer
Act**

*Joint Senate & Assembly Committee on Housing
415 Northwest – October 26, 2005*

Good morning Chairwoman Cathy Stepp and committee members. I am pleased to come before you today to discuss Assembly Bill 783 and Senate Bill 401, which are companion bills.

The intent of this legislation is to insure consumer protection in light of changing real estate business models and practices.

As we have moved into the 21st Century, real estate markets have changed but laws have not kept up with the times. Consumers are now using a variety of on-line resources to buy and sell real estate; resources that did not even exist 10 years ago when Wisconsin's real estate laws were adopted.

A combination of new technology and strong real estate markets have intensified competition and resulted in many new consumer choices for real estate representation. Buyers' agents, sellers' agents, limited service brokers, reduced commission brokers, and multiple representation have all provided consumers with new choices. However, the laws must be updated to insure that consumers are also protected.

This legislation recognizes today's real estate market realities and provides consumers with increased choice and protection. This legislation clearly defines the relationship between consumers and their real estate agent at each and every stage on a transaction.

Under this bill consumers would be free to select current forms of representation, but may also now choose fully disclosed and defined "designated agency," which would allow them to continue to

use the real estate agent of their choice regardless of who is listing the property. The concept of "designated agency," where buyers and sellers may choose to retain their real estate agents even if they are from the same company, is not a new concept. More than half the states in the United States have such laws and it has worked very well for both consumers and real estate companies, large and small.

This legislation retains Wisconsin's current law requiring complete confidentiality to all parties, the strongest such law in the country. The confidentiality duty protects consumers in any agency relationship by making it illegal for a broker to put his or her interests ahead of the consumer.

The bill will also:

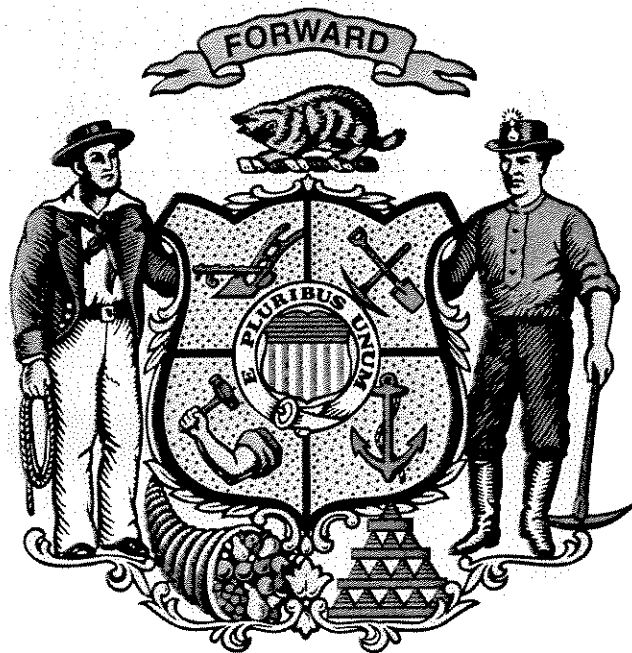
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- Require agents to be neutral in their dealings with all parties until one party or the other retains them as an agent.
- Require strict confidentiality and loyalty duties of agents providing services to multiple clients in a transaction.
- Clarify the relationship between license law and common law.

In addition, if members have various specific technical questions about the language we have some real estate attorneys representing the WRA which will testify later today.

This legislation has been developed over three years, receiving input from a large variety of experts and groups. It has been thoroughly thought out and is well balanced. This legislation is supported by, and has extensive input from, both the Wisconsin Department of Regulation & Licensing and the Wisconsin Realtors Association.

Buying a home is among the most significant decisions anyone or any family can make. This law provides these families with better services, enhanced transactional transparency, and increased consumer protection.

Thank you. At this time I would be happy to answer any questions of the committee.



Becher, Scott

From: Jay Reifert [true-agents@true-agent.com]
Sent: Friday, October 28, 2005 10:29 AM
To: Becher, Scott
Subject: Request for Documents

Hi Scott,

Please fax me a copy of the glossy brochure that the WRA has been handing out, with regards to AB 783 and also the handouts the WRA had given to the joint committee on the same issue earlier this week.

My fax number is 608-273-8388. Thanks!

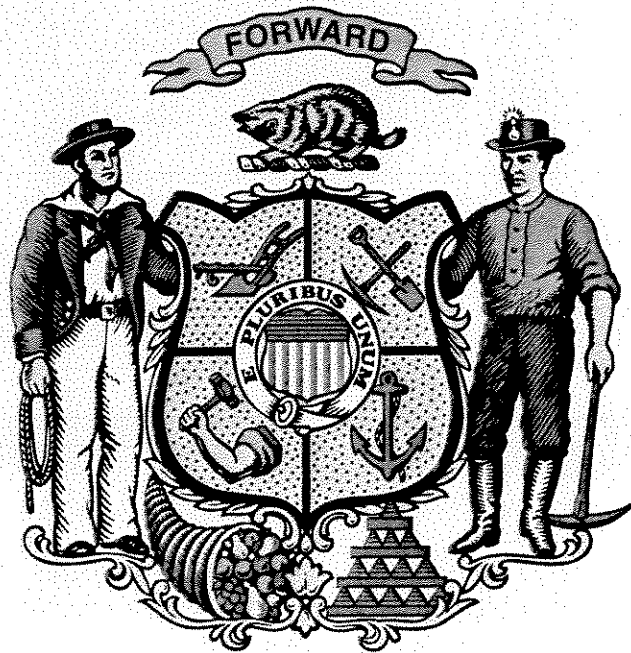
Sincerely Yours,

Jay Reifert, Organizer/Director of Operations REAL-Reform (Real Estate Agency Law-Reform)

<http://www.real-reform.org>

<http://real-reform.blogspot.com> <--- New Blog...Check Back Frequently

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(608)273-8841, Office * (608)273-8388, Fax
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or <mailto:true-agents@true-agent.com>



Proposed Modernization of Real Estate Agency Law

Summary

1. Filling in the gaps in the license law

Current law: Fails to adequately address significant marketplace issues such as:

- Need to regulate brokerage practices prior to "negotiations."
- Need to define sub-agency relationships.
- Need to clarify broker liability for acts by their agents.
- Need to clarify inconsistencies between license law and common law.

Recommendations:

- Modify the definitions of "broker" and "negotiate" to recognize pre-negotiation broker services (such as providing information and advise on real estate matters), constitute the beginning of broker services.
- Modify the definition of "client" and "subagent" to create transparency and clarity in the duties owed to clients by all brokers in a transaction.
- Clarify that a brokers liability under the license law is limited to liability arising out of an agent's brokerage service activities only and not to unrelated activities such as car accidents, etc.
- Clarify that inconsistencies between common law and the license law shall favor the statutes and related rules.

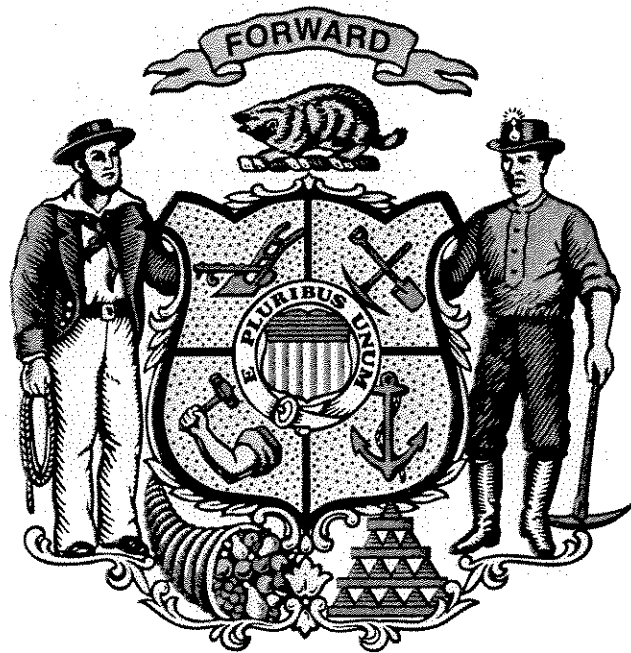
2. Address agency issues of concern to both consumers and licensees

Current law: Current law forces a formal agency relationship between an agent and a consumer even though they are only in the initial stages of a relationship and providing just preliminary information such as a listing presentation, providing market data, opinions on value, etc. Consumers are usually not ready to enter into a long term agreement at that time.

Recommendations:

- Allow brokers to provide limited brokerage services to parties without a formal agency relationship prior to engaging in negotiations such as showings.
- Agents would however be required to establish an agency relationship and present an agency disclosure before beginning negotiations or providing opinions that are contrary to the interests of any other party.
- In this pre-agency stage, agents would still be required to owe all parties significant duties – including traditional duties plus a duty not to place the interests of the broker ahead of the interests of any party.

- These changes reflect current practices and are consistent with consumer expectations. These changes allow agents in these pre-agency roles to remain neutral in there dealings with all parties. But after and agency or sub-agency agreement is formally established, the agent's loyalty duties become clear and appropriate opinions and advice can then be given.



KEY ISSUES: CHAPTER 452 MODERNIZATION ACT

ADDRESS PRE-NEGOTIATION BROKERAGE ACTIVITIES

Chapter 452 currently does not adequately define the role and duties of brokers when brokerage services are provided to consumers in the early stages of their relationship - prior to negotiations. The bill clarifies what a broker's duties are before and after establishment of agency relationships, clarifies when agency relationships must be decided upon and when agency disclosures must be given.

- Agency relationship required prior to negotiations: page 13, line 21 to p 14 line 4
- Requirement to provide agency disclosure: page 15 lines 1 to 3, page 16 lines 12 to 14 and page 16 lines 7 to 11
- Duties before agency relationship: page 13 lines 1 to 8
- Duties after agency relationship: page 9, line 16 to page 12, line 25

DEFINING SUBAGENCY RELATIONSHIPS

Another major gap in the regulatory model was the failure to identify the duties owed to parties by brokers who are acting as subagents of another broker. The bill defines subagency and the duties owed by a subagent to the parties in a transaction.

- Definition of Subagency: Page 9 lines 7 to 10
- Subagent's duties: page 12 lines 17 to 25
- Disclosure of Subagency: page 19 lines 10 to 15

EMERGING BUSINESS MODELS

The emergence of brokers who, as part of their business model do not provide negotiation services, has lead to the question of whether negotiation is an mandatory duty owed to a broker's clients. The bill provides that negotiation is not a mandatory duty but, to ensure consumer understanding of the significance of the waiver of this essential service, an express written waiver of negotiation duties is required to be made by the client.

- Waiver of Negotiation Duties: Page 13, lines 9-20

AGENCY DISCLOSURE

Agency disclosure is still necessary and appropriate. Separate disclosure forms have been developed for clients and customers so every party can receive the most effective disclosure form possible. The bill provides for a plain-English disclosure to ensure that these disclosures are more meaningful.

- Customer disclosure: page 15, line 4 to page 16 line 6
- Client disclosure: page 16 line 15 to page 20 line 2

ADDING CONSUMER CHOICE TO MULTIPLE REPRESENTATION

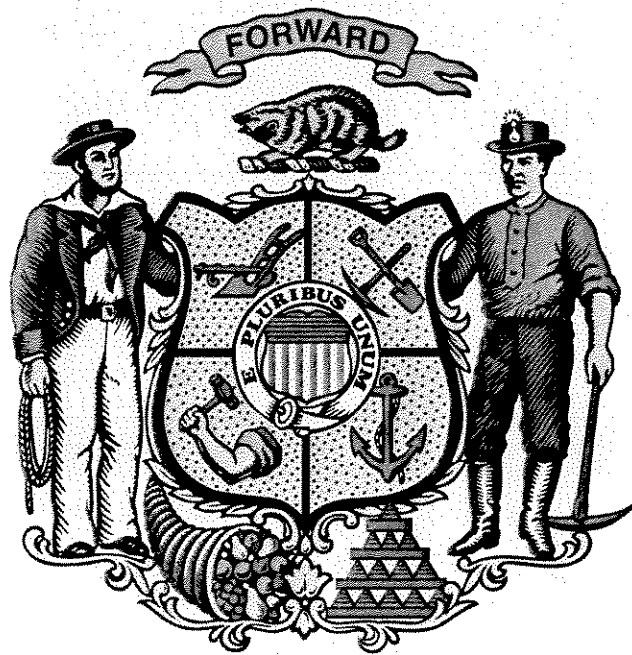
Current multiple representation rules prohibit consumers from choosing to receive full negotiation services from the agent they have selected to work with. Current law requires

consumers to lose the valuable negotiation services they contracted for under the theory that the agents in the transaction will violate their legal duties of loyalty and confidentiality in order to take advantage of one or both of the parties. This assumption is unfounded as evidenced by the fact that licensees have universally protected the confidentiality of customers who have been negotiating with clients of that licensee's broker. Current multiple representation regulations are based on the proposition that these same licensees would violate the confidentiality duties owed to a client who is negotiating with other clients of the licensee's broker. The bill provides consumers the choice of selecting full negotiation under the designated agency model, the current limited negotiation multiple representation model and finally the opportunity to choose only exclusive agency relationship transactions.

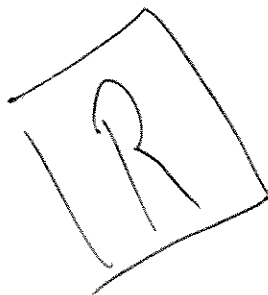
- Definition of designated agency: page 6 lines 12 to 17
- Definition of multiple representation: page 7 lines 21 to 24
- Consent required for designated agency: page 14 lines 9 to 13
- Consent required of multiple representation: page 14 lines 5 to 8
- Negotiation under multiple representation: page 14 lines 20 to 24
- Negotiation under designated agency: page 14 lines 14 to 19
- Disclosure of and consent to designated agency and multiple representation: page 17 line 22 to page 19 line 9

CLARIFICATION OF CHAPTER 452 LANGUAGE

Much of the balance of the bill clarifies language in order to minimize uncertainty caused by current language. Revisions to the definitions of broker, employ, party, etc. illustrate the drafter's attempt to improve the clarity and consistency of Chapter 452 language.



2005 BILL



*Customer
clerk
Multi Rpt + Daily copy*

1 AN ACT *to repeal* 452.01 (2) (d), 452.01 (2) (e), 452.01 (2) (f), 452.01 (2) (g), 452.01
2 (5m) (d) and 452.137; *to renumber and amend* 452.133 (2) (a); *to amend*
3 452.01 (1m), 452.01 (2) (a), 452.01 (2) (b), 452.01 (2) (h), 452.01 (3e), 452.01 (4d),
4 452.01 (4h), 452.01 (4p), 452.01 (4t), 452.01 (5m) (intro.), 452.01 (5m) (a), 452.01
5 (5m) (c), 452.01 (5r), 452.01 (7), 452.12 (3), 452.133 (1) (intro.), 452.133 (1) (a),
6 452.133 (1) (b), 452.133 (1) (c), 452.133 (1) (d), 452.133 (1) (e), 452.133 (1) (f),
7 452.133 (1) (g), 452.133 (2) (intro.), 452.133 (2) (b), 452.133 (2) (c), 452.138,
8 452.139 (1) and 452.14 (3) (f); *to repeal and recreate* 452.135; and *to create*
9 452.01 (2) (bm), 452.01 (3w), 452.01 (5j), 452.01 (5w), 452.01 (7r), 452.133 (2)
10 (a) 2., 452.133 (2) (am), 452.133 (2) (d), 452.133 (4) and (5), 452.133 (6) and
11 452.134 of the statutes; **relating to:** duties of real estate brokers and
12 salespersons.

Analysis by the Legislative Reference Bureau

This bill makes several changes to current law regarding real estate practice.

BILL**BROKERS' DUTIES TO PARTIES AND CLIENTS**

Under current law, a broker providing brokerage services owes certain duties to all parties to a transaction, including the duties to: 1) provide brokerage services to all parties honestly, fairly, and in good faith; 2) when negotiating on behalf of a party, present contract proposals in an objective and unbiased manner and disclose the advantages and disadvantages of the proposals; and 3) account for all property coming into the broker's possession within a reasonable time after receiving it. The bill deletes a broker's duty to provide brokerage services in good faith and replaces a broker's duty to account for property within a reasonable time with a duty to safeguard property held by the broker according to rules promulgated by the Department of Regulation and Licensing under authority granted by current law.

Under current law, a broker owes to the broker's client all the duties owed to a party, and additional duties to: 1) loyally represent the client's interests by placing the client's interests ahead of the interests of any other party; 2) disclose to the client all material information known to the broker and not known to the client or discoverable through reasonably vigilant observation, unless the information is confidential; and 3) fulfill any legal obligation required by the agency agreement and any legal order by the client that is within the scope of the agency agreement.

This bill modifies the duty to loyally represent the client's interests. Under the bill, a broker satisfies this duty by doing the following: 1) placing the client's interests ahead of the broker's interests; and 2) placing the client's interests ahead of the interests of nonclients in the transaction by not disclosing information and advice to nonclients if disclosure is contrary to the client's interests. The bill also creates a duty to provide, upon the client's request, information and advice on matters that are material to a transaction and a duty to negotiate on behalf of a client. Under the bill, a client may waive the broker's duty to negotiate, but only in writing.

BROKERAGE SERVICES

Under current law, a person may not engage in brokerage services unless the person is a licensed broker. Currently, brokerage services include promoting certain transactions in real estate or business opportunities. This bill specifies that brokerage services include promoting certain transactions in real estate, time shares, or businesses or their goodwill, inventory, or fixtures, whether or not the business includes real property.

Under current law, a broker may not provide brokerage services to a party to a transaction without an agency agreement that authorizes the broker to provide the services. The agency agreement must contain a statement of the terms and conditions of the brokerage services that the broker will provide. Also under current law, a broker may not provide brokerage services to a party or a client unless the broker has provided the party or client with a disclosure form that: 1) identifies the broker's clients in the transaction; 2) states the broker's duties to the broker's clients; 3) states the broker's duties to a party; and 4) contains a statement, the text of which is prescribed by current law, describing the broker's duties to disclose certain known defects affecting a property and to maintain the confidentiality of certain other information.

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Under the bill, a broker may provide brokerage services to any person in a transaction, whether or not the broker has entered into an agency agreement with a party to the transaction or has been engaged to provide brokerage services in the transaction as a subagent (see "Subagency," below), except that a broker may not negotiate on behalf of a person who is not the broker's client unless another party to the transaction is the broker's client or is a client of another broker who has engaged the broker to provide brokerage services in the transaction as a subagent, and the broker has provided to the party a disclosure form stating the broker's duties to a person receiving brokerage services from the broker. The bill deletes the requirements that the disclosure form identify the broker's client in the transaction and state the broker's duties to the broker's client. Under the bill, the disclosure form summarizes the broker's duties to parties and the broker's disclosure and confidentiality duties.

The bill creates a separate disclosure form for a broker's client. Under the bill, a broker is required to provide the form to a client not later than the time the broker enters into an agency agreement with the client. The client disclosure form summarizes the broker's duties to clients, the broker's disclosure and confidentiality duties, and the broker's duties if the client is involved in a transaction in which another party is also the broker's client (see "Multiple representation relationships and designated agency," below). The client disclosure form also contains a space for the client to indicate whether the client consents to certain multiple representation relationships.

Under the bill, if a broker is providing services to a person in a transaction in which no party is the broker's client or a client of another broker who has engaged the broker to provide brokerage services as a subagent, the broker may not provide to any party advice or opinions relating to the transaction in which the person is receiving brokerage services if doing so is contrary to the interests of the person or another person receiving services from the broker.

The bill also modifies the current definition of "negotiate." The bill specifies that providing advice or opinions that are material to a person's transaction or showing real estate to a party does not, in and of itself, constitute negotiation.

SUBAGENCY

This bill defines a subagent as a broker who is engaged by a principal broker to provide brokerage services in a transaction but who is not the principal broker's employee. A broker may not engage another broker to provide brokerage services to the broker's client as a subagent unless the agency agreement between the broker and the client authorizes the broker to engage a subagent.

Under the bill, a broker who has been engaged to provide brokerage services in a transaction as a subagent owes all parties the duties owed by a broker who is not a subagent. Additionally, in a transaction in which a subagent has been engaged by a principal broker, a subagent may not place the subagent's interests ahead of the interests of the principal broker's client in the transaction, or provide advice or opinions to parties in the transaction if doing so is contrary to the interests of the principal broker's client. A broker who has been engaged by another broker as a

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subagent does not owe the principal broker's client the additional duties that a broker owes to the broker's own client.

MULTIPLE REPRESENTATION RELATIONSHIPS AND DESIGNATED AGENCY

Currently, a broker may not provide brokerage services to more than one client in a transaction (multiple representation relationship) unless the broker has entered into an agency agreement with, and made certain written disclosures to, each client, and each client has given written consent. Under current law, a broker who represents more than one client in a transaction may not place the interests of any client ahead of the interests of another client in the transaction.

Under the bill, if a broker's client does not give written consent to multiple representation relationships or if the client withdraws such consent, neither the broker nor the broker's employees may place the interests of any client ahead of the interests of any other in negotiations. A client may withdraw consent to multiple representation relationships at any time by written notice to the broker.

Also under the bill, if a client consents to multiple representation relationships the client may also consent to receiving negotiation services from the broker in a multiple representation relationship only from an employee of the broker who is not providing negotiation services to another client of the broker in the transaction ("designated agency"). In a designated agency relationship, the broker's employee may provide to the client on whose behalf the employee is negotiating information, opinions, and advice to assist the client in the negotiations, whether or not the information, opinions, and advice place the interests of one of the broker's clients ahead of the interests of another client of the broker.

If a client consents to multiple representation relationships but not to designated agency, the broker and the broker's employees may not place the interests of any client ahead of the interests of any other in negotiations.

BROKER LIABILITY

Current law provides that duties imposed on brokers by statutes or by rules supersede fiduciary duties the broker has to a party based on common law principles of agency, to the extent that common law is inconsistent with the statutes or rules. Under the bill, a broker's duties under the statutes or rules supersede any inconsistent common law duties or obligations, not just fiduciary duties based on agency principles.

Under current law, a broker must supervise, and is responsible for, the acts of any broker, salesperson, or time-share salesperson employed by the broker. Under the bill, a broker is responsible for brokerage services provided on behalf of the broker by a broker, salesperson, or time-share salesperson employed by the broker.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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1 452.01 (1m) "Agency agreement" means a written agreement between a broker
2 and a client ~~under s. 452.135 (1) in which the client authorizes the broker to provide~~
3 brokerage services to the client.

4 **SECTION 2.** 452.01 (2) (a) of the statutes is amended to read:

5 452.01 (2) (a) For another person, and for commission, money, or other thing
6 of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase, or
7 rental of, or the granting or acceptance of an option to sell, exchange, purchase, or
8 rent, an interest or estate in real estate, a time share, or a business or its goodwill,
9 inventory, or fixtures, whether or not the business includes real property.

10 **SECTION 3.** 452.01 (2) (b) of the statutes is amended to read:

11 452.01 (2) (b) Is engaged wholly or in part in the business of selling or
12 exchanging interests or estates in real estate or businesses, including businesses'
13 goodwill, inventory, or fixtures, whether or not the business includes real property,
14 to the extent that a pattern of ~~real estate sales~~ or exchanges is established, whether
15 or not ~~such the person owns the real estate is owned by such person or businesses.~~
16 Five sales or exchanges in one year or 10 sales or exchanges in 5 years is presumptive
17 evidence of a pattern of sales or exchanges.

18 **SECTION 4.** 452.01 (2) (bm) of the statutes is created to read:

19 452.01 (2) (bm) For another person, and for commission, money, or other thing
20 of value shows real estate or a business or its inventory or fixtures, whether or not
21 the business includes real property, except that this paragraph does not include
22 showing a property that is offered exclusively for rent.

23 **SECTION 5.** 452.01 (2) (d) of the statutes is repealed.

24 **SECTION 6.** 452.01 (2) (e) of the statutes is repealed.

25 **SECTION 7.** 452.01 (2) (f) of the statutes is repealed.

BILL

1 **SECTION 8.** 452.01 (2) (g) of the statutes is repealed.

2 **SECTION 9.** 452.01 (2) (h) of the statutes is amended to read:

3 452.01 (2) (h) For another person, and for ~~a~~ commission, money, or other thing
4 of value, promotes the sale, exchange, purchase, option, rental, or leasing of real
5 estate, a time share, or a business opportunities or its goodwill, inventory, or fixtures,
6 whether or not the business includes real property. This paragraph does not apply
7 to a person who only publishes or disseminates verbatim information provided by
8 another person.

9 **SECTION 10.** 452.01 (3e) of the statutes is amended to read:

10 452.01 (3e) "Brokerage service" means any service described under sub. (2) ~~(a)~~
11 ~~to (h)~~ provided by a broker to another person.

12 **SECTION 11.** 452.01 (3w) of the statutes is created to read:

13 452.01 (3w) "Designated agency" means a multiple representation
14 relationship in which each client of the broker in the multiple representation
15 relationship receives negotiation services from the broker only from employees of the
16 broker who are not providing negotiation services to any other client of the broker
17 in the transaction.

18 **SECTION 12.** 452.01 (4d) of the statutes is amended to read:

19 452.01 (4d) "Employ", when used in reference to a broker employing another
20 broker, a salesperson, or a time-share salesperson, ~~includes~~ means engaging the
21 services of another broker, a salesperson, or a time-share salesperson ~~who provides~~
22 to provide brokerage services to the broker's clients and customers on behalf
23 of the broker and under the broker's supervision, including engaging a broker,
24 salesperson, or time-share salesperson as an independent contractor.

25 **SECTION 13.** 452.01 (4h) of the statutes is amended to read:

BILL

1 452.01 (4h) "Employee", when used in reference to an employee of a broker,
2 includes means another broker, a salesperson, or a time-share salesperson who
3 provides brokerage services to the broker broker's clients and customers on behalf
4 of the broker and under the broker's supervision, including a broker, salesperson, or
5 time-share salesperson engaged by the broker as an independent contractor.

6 **SECTION 14.** 452.01 (4p) of the statutes is amended to read:

7 452.01 (4p) "Employer", when used in reference to a broker who is the
8 employer of another broker, a salesperson, or a time-share salesperson, ~~includes~~
9 means a broker who engages the services of another broker, a salesperson, or a
10 time-share salesperson ~~who provides services to the broker to provide brokerage~~
11 services to the broker's clients and customers on behalf of the broker and under the
12 broker's supervision, including a broker who engages the services of another broker,
13 salesperson, or time-share salesperson as an independent contractor.

14 **SECTION 15.** 452.01 (4t) of the statutes is amended to read:

15 452.01 (4t) "Employment", when used in reference to a broker's employment
16 of another broker, a salesperson, or a time-share salesperson, ~~includes~~ means the
17 state of ~~providing~~ being engaged by a broker to provide services to the broker ~~by the~~
18 ~~other~~ broker's clients and customers on behalf of the broker and under the broker's
19 supervision, including being engaged by the employing broker, the salesperson or the
20 ~~time-share salesperson~~ as an independent contractor.

21 **SECTION 16.** 452.01 (5j) of the statutes is created to read:

22 452.01 (5j) "Multiple representation relationship" means a relationship
23 between a broker and 2 or more of the broker's clients in which the clients are parties
24 in the same transaction.

25 **SECTION 17.** 452.01 (5m) (intro.) of the statutes is amended to read:

BILL**SECTION 17**

1 452.01 (5m) (intro.) ~~“Negotiate” means to act as an intermediary between the~~
2 ~~parties to a transaction provide to a party assistance within the scope of the~~
3 ~~knowledge, skills, and training required under this chapter in developing a proposal~~
4 ~~or agreement relating to a transaction, including doing any of the following:~~

5 **SECTION 18.** 452.01 (5m) (a) of the statutes is amended to read:

6 452.01 (5m) (a) ~~Facilitating Acting as an intermediary by facilitating or~~
7 ~~participating in the parties’ discussion of the terms of a contract or agreement~~
8 ~~concerning communications between parties related to the parties’ interests in a~~
9 ~~transaction. In this paragraph, providing advice or opinions on matters that are~~
10 ~~material to a transaction in which a person is engaged or intends to engage or~~
11 ~~showing a party real estate does not, in and of itself, constitute acting as an~~
12 ~~intermediary by facilitating or participating in communications between parties.~~

13 **SECTION 19.** 452.01 (5m) (c) of the statutes is amended to read:

14 452.01 (5m) (c) ~~Presenting to a party the proposals of other parties to the~~
15 ~~transaction and informing the party receiving a proposal of the advantages and~~
16 ~~disadvantages giving the party a general explanation of the provisions of the~~
17 ~~proposal.~~

18 **SECTION 20.** 452.01 (5m) (d) of the statutes is repealed.

19 **SECTION 21.** 452.01 (5r) of the statutes is amended to read:

20 452.01 (5r) ~~“Party” means a person seeking to sell, exchange, buy or rent an~~
21 ~~interest in real estate, a business or a business opportunity. “Party” includes a~~
22 ~~person who seeks to grant or accept an option to buy, sell or rent an interest in real~~
23 ~~estate, a business or a business opportunity engage in a transaction.~~

24 **SECTION 22.** 452.01 (5w) of the statutes is created to read:

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1 452.01 (5w) "Principal broker" means a broker who engages a subagent to
2 provide brokerage services in a transaction.

3 **SECTION 23.** 452.01 (7) of the statutes is amended to read:

4 452.01 (7) "Salesperson" means any person other than a broker or time-share
5 salesperson who is employed by a broker ~~to perform any act authorized by this~~
6 ~~chapter to be performed by a broker.~~

7 **SECTION 24.** 452.01 (7r) of the statutes is created to read:

8 452.01 (7r) "Subagent" means a broker who is engaged by another broker to
9 provide brokerage services in a transaction, but who is not the other broker's
10 employee.

11 **SECTION 25.** 452.12 (3) of the statutes is amended to read:

12 452.12 (3) **BROKER'S LIABILITY FOR ACTS OF EMPLOYEES.** Each broker shall
13 supervise, and is responsible for, the acts of, brokerage services provided on behalf
14 of the broker by any broker, salesperson, or time-share salesperson employed by who
15 is an employee of the broker.

16 **SECTION 26.** 452.133 (1) (intro.) of the statutes is amended to read:

17 452.133 (1) **BROKER'S DUTIES TO ALL PARTIES TO PERSONS IN A TRANSACTION.** (intro.)
18 ~~In A broker who is providing brokerage services to a party to person in a transaction;~~
19 ~~a broker shall do all of the following owes all of the following duties to the person:~~

20 **SECTION 27.** 452.133 (1) (a) of the statutes is amended to read:

21 452.133 (1) (a) Provide The duty to provide brokerage services to all parties to
22 the transaction honestly, and fairly and in good faith.

23 **SECTION 28.** 452.133 (1) (b) of the statutes is amended to read:

24 452.133 (1) (b) Diligently exercise The duty to provide brokerage services with
25 reasonable skill and care in providing brokerage services to all parties.

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1 **SECTION 29.** 452.133 (1) (c) of the statutes is amended to read:

2 452.133 (1) (c) ~~Disclose to each party~~ The duty to timely disclose in writing all
3 material adverse facts that the broker knows and that the party person does not
4 know or cannot discover through reasonably vigilant observation, unless the
5 disclosure of a material adverse fact is prohibited by law.

6 **SECTION 30.** 452.133 (1) (d) of the statutes is amended to read:

7 452.133 (1) (d) ~~Keep~~ The duty to keep confidential any information given to the
8 broker in confidence, or any information obtained by the broker that he or she knows
9 a reasonable party person would want to be kept confidential, unless the information
10 must be disclosed under par. (c) or s. 452.23 or is otherwise required by law to be
11 disclosed or the party person whose interests may be adversely affected by the
12 disclosure specifically authorizes the disclosure of particular confidential
13 information. A broker shall continue to keep the information confidential after the
14 transaction is complete and after the broker is no longer providing brokerage
15 services to the party person.

16 **SECTION 31.** 452.133 (1) (e) of the statutes is amended to read:

17 452.133 (1) (e) ~~Provide~~ The duty to provide accurate information about market
18 conditions that affect ~~a~~ the person's transaction, ~~to any party who requests the~~
19 information, within a reasonable time of after the party's person's request, unless
20 disclosure of the information is prohibited by law.

21 **SECTION 32.** 452.133 (1) (f) of the statutes is amended to read:

22 452.133 (1) (f) ~~Account for all~~ The duty to safeguard trust funds and other
23 property coming into the possession of a held by the broker that belongs to any party
24 within a reasonable time of receiving the property as required by rules promulgated
25 by the department under s. 452.13 (5).

BILL

1 **SECTION 33.** 452.133 (1) (g) of the statutes is amended to read:

2 452.133 (1) (g) When the broker is negotiating on behalf of a party, the duty to
3 present contract proposals in an objective and unbiased manner and disclose the
4 advantages and disadvantages of the proposals.

5 **SECTION 34.** 452.133 (2) (intro.) of the statutes is amended to read:

6 452.133 (2) **BROKER'S DUTIES TO A CLIENT.** (intro.) ~~In addition to his or her duties~~
7 ~~under sub. (1), a~~ A broker providing brokerage services to his or her client ~~shall do~~
8 owes the client the duties that the broker owes to a person under sub. (1) and all of
9 the following additional duties:

10 **SECTION 35.** 452.133 (2) (a) of the statutes is renumbered 452.133 (2) (a) (intro.)
11 and amended to read:

12 452.133 (2) (a) (intro.) ~~Loyally~~ The duty to loyally represent the client's
13 interests by ~~placing~~ doing all of the following:

14 1. Placing the client's interests ahead of the broker's interests of ~~any other~~
15 ~~party, unless loyalty to a client violates the broker's duties under sub. (1) or s. 452.137~~
16 ~~(2).~~

17 **SECTION 36.** 452.133 (2) (a) 2. of the statutes is created to read:

18 452.133 (2) (a) 2. Placing the client's interests ahead of the interests of persons
19 in the transaction who are not the broker's clients by not disclosing to persons in the
20 transaction other than the broker's clients information or advice the disclosure of
21 which is contrary to the interests of a client of the broker, unless the disclosure is
22 required by law.

23 **SECTION 37.** 452.133 (2) (am) of the statutes is created to read:

24 452.133 (2) (am) The duty to provide, when requested by the client, information
25 and advice to the client on matters that are material to the client's transaction and

BILL**SECTION 37**

1 that are within the scope of the knowledge, skills, and training required under this
2 chapter.

3 **SECTION 38.** 452.133 (2) (b) of the statutes is amended to read:

4 452.133 (2) (b) ~~Disclose~~ The duty to disclose to the client all information known
5 by the broker that is material to the transaction and that is not known by the client
6 or discoverable by the client through reasonably vigilant observation, except for
7 confidential information under sub. (1) (d) and other information the disclosure of
8 which is prohibited by law.

9 **SECTION 39.** 452.133 (2) (c) of the statutes is amended to read:

10 452.133 (2) (c) ~~Fulfill~~ The duty to fulfill any obligation required by the agency
11 agreement, and any order of the client that is within the scope of the agency
12 agreement, that ~~are~~ is not inconsistent with another duty that the broker has under
13 this chapter or any other law.

14 **SECTION 40.** 452.133 (2) (d) of the statutes is created to read:

15 452.133 (2) (d) The duty to negotiate on behalf of the client.

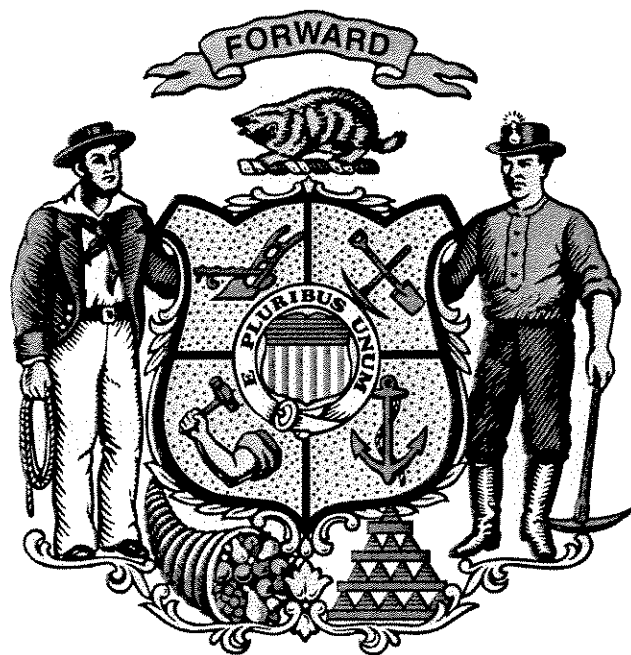
16 **SECTION 41.** 452.133 (4) and (5) of the statutes are created to read:

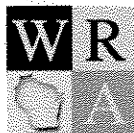
17 452.133 (4) **SUBAGENT'S DUTIES.** (a) A subagent owes all persons to whom a
18 broker is providing brokerage services in a transaction the duties specified in sub.
19 (1) but does not owe the clients of the principal broker the duties under sub. (2).

20 (b) A subagent may not do any of the following:

21 1. Place the subagent's interests ahead of the interests of the clients of the
22 principal broker in the transaction in which the subagent has been engaged by the
23 principal broker.

24 2. Provide advice or opinions to parties in the transaction if providing the
25 advice or opinions is contrary to the interests of the clients of the principal broker in





Proposed Modernization of Real Estate Agency Law

Summary

1. Modernize Wisconsin's real estate license law

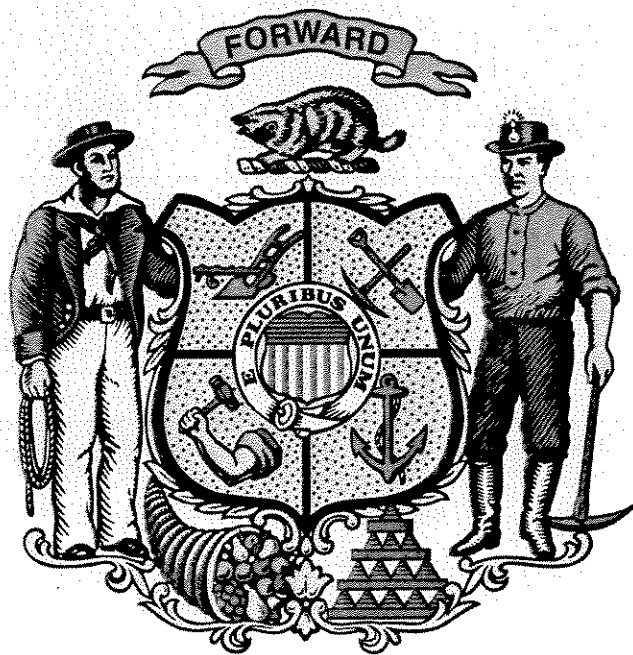
- Establishes regulation of brokerage practices conducted before formal "negotiations." (Current law begins regulation with "negotiation.")
- Clarifies the definition of "subagents" so agents and consumers know what duties are owed to consumers by subagents.
- Clarifies that the license law establishes broker liability only for the real estate brokerage services provided by their agents.
- Clarifies that license law statutes and related rules supersede common law when there is a conflict.

2. Address agency issues of concern to both consumers and licensees

- Allows agents to provide limited but important information before a formal agency agreement is signed so consumers know what they're signing.
- Requires agents to follow traditional duties owed to all parties during this pre-agency period.
- Protects all parties by requiring "neutrality" for all parties before agency relationships are determined and agency disclosures are presented. Agents assume full duties and loyalties after an agency agreement is signed and agency disclosures are provided.
- Allows agents to provide full negotiation services to multiple clients in a transaction with strict loyalty and confidentiality duties to protect the interests of each client.

3. Minimize unnecessary complexity

- Replaces the current agency disclosure with a plain English agency disclosure.





Wisconsin REALTORS® Association

Real Estate Agency Modernization Legislation

(AB 783 – Rep. Wieckert and SB 401 – Sen. Stepp)

The Truth About The American Dream Consumer Act

You recently received communications from lobbyist Gary Goyke and his client Jay Riefert, regarding AB 783 and SB 401. This legislation would revise and modernize Wisconsin real estate agency laws. Their communications contained either knowingly false and misleading information or it demonstrated a significant lack of understanding of the bill and current law. In either case, here are the facts:

The State Bar's position

Opponents claimed the State Bar of Wisconsin opposes this legislation. This is false. The Bar raised issues in an early report on this legislation which have since been resolved. The State Bar is neutral on this bill.

Disclosures to consumers

Opponents misleadingly claim the legislation does not require real estate agents to disclose who they represent until they draft an offer to purchase. They are wrong.

Setting the Facts Straight

- The proposed legislation requires this disclosure much earlier in the transaction when a consumer signs an agency agreement (whether the consumer is a buyer or a seller or when the agent participates in any communications related to a buyer or sellers' interest in a transaction).
- This change substantially clarifies current law by clearly defining what triggers the need for agency disclosure.
- More importantly, current Wisconsin law provides all consumers full confidentiality rights. Nothing discussed between any agent in the transaction and any consumer in the transaction can be used against the consumer. This legislation does not change this important consumer protection.

Buyers right to choose representation

Opponents misleadingly claim buyers will be denied their right to choose an agent because of the timing of disclosing agency and because of "procuring cause." Opponents are wrong here too.

Facts:

- Nothing in this bill changes the process of choosing a real estate agent or the industry's procuring cause standards.
- Under this legislation, buyers who choose their own agent will receive substantially better service than buyers working with an agent of the seller.
- Regarding procuring cause, opponents are evidently unaware that this is an industry standard applicable only to members of the REALTORS® Association. This standard is used to determine when a cooperating agent earns a commission from the listing agent. It is a broker-to-broker standard completely outside the license law and nothing in this bill has any impact on procuring cause issues.



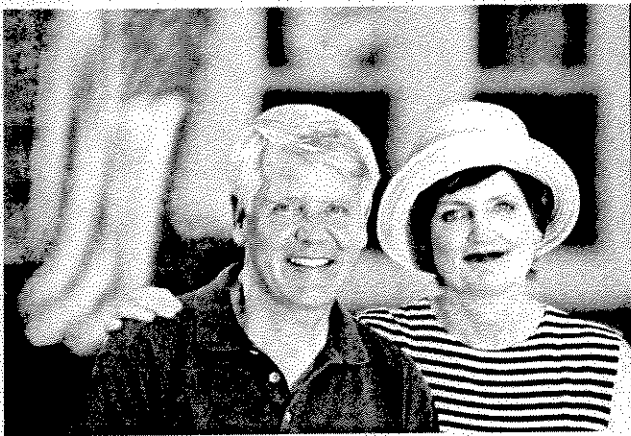
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Wisconsin REALTORS® Association

Designated Agency

Finally, opponents falsely claims that "designated agency" – the ability for one firm to separately represent the buyer and seller – will somehow hurt small real estate companies. The opponents, yet again, are wrong.



*On behalf of your professional
REALTOR® constituents and the
homeowners and property owners
they represent, we strongly
encourage you to actively support
AB 783 (Rep. Wieckert) and
SB 401 (Sen. Stepp).*

Facts:

- Current law allows for the same firm to represent buyers and sellers in a real estate transaction, with the consent of the parties. It is called multiple representation. However, under current law, dual agents are restricted in the degree of negotiation they can provide to their clients. This bill does not change that.
- What does change is the bill gives consumers an additional choice – the ability for both buyers and sellers to receive full negotiation services in a multiple representation transaction. As a result, consumers can choose the current multiple representation model, choose to have each party represented by a different agent within a company (designated agency), or reject both and eliminate any potential multiple representation.
- The ability to choose designated agency enhances consumer service and protection because the current law of multiple representation dramatically restricts the advice and counseling agents can give consumers.
- The option of designated agency will help, not hurt, small real

Conclusion

- Opponents claim 75% of all REALTORS® are sole proprietors or have only a few agents. This is true. But, nearly 100% of REALTORS® in Wisconsin support this legislation!
- This legislation is the product of over three years of study, with exhaustive input from brokers large and small, and from the Department of Regulation and Licensing – the state's consumer protection agency in real estate. That is why the Department supports this legislation moving forward.
- This legislation will help REALTORS® provide consumers with better service, enhanced transactional transparency and maximum consumer protection when buying or selling real property in Wisconsin.



Support the **American Dream Consumer Act**

Consumer Confusion Weakens Consumer Protection

*Let's make buying a home simple, safe and satisfying.
Support the AB 783 and SB 401.*

- Buying a home is the biggest purchase most families make in a lifetime.
- The median price for a Wisconsin home is now over \$160,000!
- Buying and selling a home is complex and often confusing – even if you use a real estate professional. Nearly 125,000 Wisconsin families that bought or sold homes last year with the help of a real estate agent can attest to that!
- While our laws governing real estate transactions have done a good job in the past, they remain confusing – and consumer confusion weakens consumer protections.

**BUT YOU CAN HELP CHANGE THAT BY SUPPORTING
THE AMERICAN DREAM CONSUMER ACT. AB 783 AND
SB 401 WILL HELP PROFESSIONAL REALTORS PROVIDE
CONSUMERS WITH:**

BETTER SERVICE

ENHANCED TRANSACTIONAL TRANSPARENCY

MAXIMUM CONSUMER PROTECTION

Intent of this legislation

The American Dream Consumer Act is the product of over three years of research and study, including input from consumer protection experts, legal experts and industry experts, and is supported by the Department of Regulation and Licensing and the Real Estate Board. The intent of this legislation is to insure consumer protection in light of changing real estate business models and practices.



Support the American Dream Consumer Act

Reasons to Support AB 783 and SB 401

- Technology has dramatically changed the real estate market over the past decade but the laws governing the relationship between real estate agents and consumers remains unchanged.
- Better-informed consumers however remain confused about the duties they are owed by real estate agents in a transaction.
- Technology and strong real estate markets have intensified competition and created new real estate business models offering consumers a wide choice of professional real estate representation.
- But while buyers' agents, sellers' agents, limited service brokers, reduced commission brokers and the like offer consumers choices, they must also fulfill the legal duties to protect consumers.
- This legislation is intended to modernize existing real estate agency laws by:
 - Revising dual agency rules to give consumers the choice to allow two agents from one company to provide full negotiation services for seller and buyer clients in a transaction.
 - Requiring strict confidentiality and loyalty duties of agents providing services to multiple clients in a transaction.
 - Clarifying that brokerage services can be provided to consumers without an agency agreement prior to negotiations.
 - Defining pre-agency relationships so that consumers are fully protected when receiving services prior to negotiations.
 - Requiring agents to be neutral in their dealings with all parties until one party or the other retains them as an agent.
 - Clarifying the role and duties of subagents.
 - Minimizing unnecessary complexity and confusion by requiring agency disclosures be provided in plain English.
 - Clarifying the relationship between license law and common law.

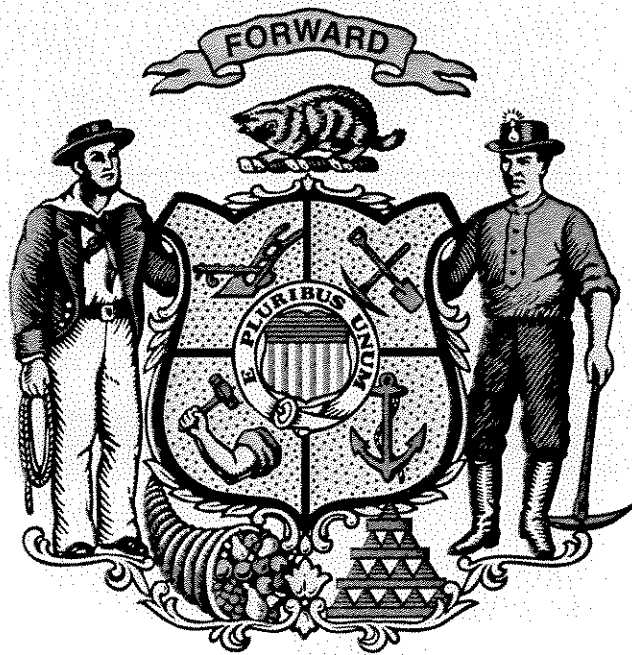
The American Dream Consumer Act is the top priority of the Wisconsin Realtors® Association because consumers deserve these changes. Your support will help professional Realtors® provide consumers with better service, enhanced transactional transparency and maximum protection when buying or selling real property in Wisconsin. We strongly encourage you to vote for and actively support AB 783 and SB 401.



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MR. CHAIRMAN
(Rep Wieckert)

I WOULD LIKE
TO VOTE

YES ON

AB 783 AND

ANY POSSIBLE

AMENDMENTS

(Rep.) LEON YOUNG